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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,264	01/16/2002	Colette Buscemi		9262

7590 07/15/2004  
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EXAMINER

BREVARD, MAERENA W

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/050,264	Applicant(s) BUSCEMI, COLETTE <span style="float: right;">CC</span>	
	Examiner Maerena W. Brevard	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 22 is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Double Patenting***

1. Claims 21 and 22 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 1,4, and 7. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Welch.

Welch discloses a utility belt comprising:

- An elongated belt member (10);
- Attachment means (15, 18);
- First receptacle (23, Figure 2); and
- First panel (11).

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2, 5, 6, and 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch in view of Oliver, Jr.

Welch discloses a utility belt comprising an elongated belt member (10, 13), an attachment means (15, 18), and a first panel (12) but does not teach a first receptacle mounted on the attachment means. However, Oliver teaches a receptacle (16) mounted on attachment means (belt buckle, 10). It would have been obvious to replace the belt buckle of Welch with the belt buckle of Oliver. Doing so would provide an easily accessible means of storing and retrieving a can of tobacco.

Regarding claim 2, Welch discloses the first and second attachment means (15, 18) both disposed on the outer surface of the belt member, but not the second attachment means disposed on the inner surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to stitch the second attachment means to the inner surface of the belt member, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 5, the first receptacle is circular, not cylindrical. It would have been an obvious matter of design choice to make the first receptacle cylindrical, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 6, the receptacle of Oliver has a generally circular bottom.

Regarding claims 8 and 9, Welch discloses a second receptacle (23) having a generally flat back panel.

Regarding claim 10, Welch discloses a second panel (11) attached to the inner surface of the belt member (Figure 2).

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Regarding claim 11, Welch discloses a first pocket (23) disposed on the inner surface of the belt member, but does not teach it having a plastic inner surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a lining made of plastic film within the pocket since the examiner takes Official Notice of the use of liners in pockets and the selection or use of plastic film to line a pocket would be within the level of ordinary skill in the art.

Regarding claims 12 and 13, Welch discloses a second pocket (24) having at least three edges attached on the inner surface of the belt member along three edges.

Regarding claims 14 and 15, the attachment means of Oliver comprises a loop member (30) and the second attachment means comprises a hook member (32), to the same degree claimed.

Regarding claims 16-18, the utility belt of Welch comprises a concave upper edge, a convex lower edge, and side edges with rounded corners.

6. Claims 3, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch in view of Oliver as applied to claim 1 above, and further in view of Herwood.

Regarding claims 3 and 19, the modified belt member of Welch discloses a third panel (25, Figure 1) disposed in general alignment with the first panel and all of the aforementioned limitations of claim 3 except, the first panel made of a flexible mesh material. However, Herwood teaches a panel made of various flexible materials, including mesh (Column 3, lines 30-37. It would have been obvious to make the first and third panels of Welch of flexible mesh material. Doing so would provide a means of visually locating objects within the pocket without removing the contents.

***Allowable Subject Matter***

6. Claims 21 and 22 are allowed.

***Response to Arguments***

7. Applicant's arguments filed 4/14/04 have been fully considered but they are not persuasive. The cited art reads on the broadest interpretation of the claim language.

8. In response to applicant's argument that the Oliver belt buckle device is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the belt buckle for holding a can of smokeless tobacco is analogous art with the utility belt of Welch since it is a receptacle mounted on an attachment means.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Hub*  
Maerena Brevard  
July 12, 2004

*Lee Young*  
LEE YOUNG  
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